



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW

Memorandum

To: Members of the AELR Committee
Standing Committee Chairs

From: Marie H. Razulis, AELR Committee Counsel
George H. Butler, Jr., AELR Committee Counsel
Crystal L. Lemieux, AELR Committee Counsel

Date: July 29, 2016

Re: **Synopses of Regulations received from 7/15/2016 through 7/28/2016**

Enclosed please find synopses of regulations received by the AELR Committee during the weeks noted above.

The Office of Policy Analysis prepares analyses of the regulations to determine if there are any problem areas, to ensure that the regulations comply with statutory authority and legislative intent, and to assess the fiscal impact of the regulations. If any regulation is of particular interest to you, please feel free to contact us at 410-946-5350 and we will supply you with a copy of the regulation along with the legal and fiscal analysis.

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cc: Victoria L. Gruber
Alexandra Hughes

Health and Mental Hygiene, Department of

Proposed Regulation

DLS Control No. 16-159

Department of Health and Mental Hygiene:

Medical Care Programs:

Nursing Facility Services:

COMAR 10.09.10.07-1, .07-2, .10-1, .11-2, .11-7, .11-8, .15-1, and .25

According to the department, the purpose of this action is to (1) clarify language related to the cost reports used when setting capital costs and nursing services cost indexing; (2) extend the interim working capital fund; (3) change the source of acuity for the pay-for-performance program; (4) correct certain citations; (5) modify the factors used to calculate the amount of an indemnity bond or standby letter of credit; and (6) establish the budget adjustment factor in order to provide a rate increase of 2% in accordance with the Fiscal Year 2017 budget.

Proposed Regulations

DLS Control No. 16-160

Department of Health and Mental Hygiene:

Medical Care Programs:

Maryland Medicaid Managed Care Program: Managed Care Organizations:

COMAR 10.09.65.02, .03 and .23

Maryland Medicaid Managed Care Program: Access: COMAR 10.09.66.01

Maryland Medicaid Managed Care Program: Benefits: COMAR 10.09.67.15

According to the department, the purpose of this action is to (1) include sexual orientation and gender as a basis for nondiscrimination; (2) add section 1157 of the Affordable Care Act to the list of provisions that Managed Care Organizations (MCO) must comply with; (3) remove the requirement that a full Systems Performance Review (SPR) must be conducted annually; (4) replace the current asthma Healthcare Effectiveness Data and Information Set (HEDIS) measure with asthma medication ratio effective January 1, 2017; (5) include texts and emails as prohibited cold call marketing activities; and (6) clarify that medically necessary podiatry services are covered for all members.

Proposed Regulation

DLS Control No. 16-163

Department of Health and Mental Hygiene:

Maryland Health Care Commission:

COMAR 10.24.19.01

According to the department, the purpose of this action is to establish COMAR 10.24.19, a new chapter in the State Health Plan for facilities and services that governs the establishment of Freestanding Medical Facilities. Two recent pieces of legislation directed the commission to adopt Certificate of Need regulations regarding freestanding medical facilities and regulations governing

conversion of an underutilized general hospital to a freestanding medical facility through an exemption from Certificate of Need. Previously, two freestanding medical facilities were established as pilot projects, and there was not an established regulatory process for considering approval of additional facilities of this type. The Freestanding Medical Facilities Chapter contains policies and standards that will guide the Certificate of Need review process for a general hospital that seeks to establish a satellite freestanding medical facility to address access issues or overcrowding. It also contains policies and standards that will guide the exemption from Certificate of Need process for a hospital seeking to convert to a freestanding medical facility.

Proposed Regulations

DLS Control No. 16-167

Department of Health and Mental Hygiene:

Board for Certification of Residential Child Care Program Professionals:

Definitions: COMAR 10.57.01.01

Certification - Residential Child Care Program Administrators:

COMAR 10.57.02.01 through .06, and .08 through .10

Certification - Residential Child and Youth Care Practitioners:

COMAR 10.57.03.01, .02, and .05 through .07

According to the department, the purpose of this action is to (1) implement the changes to the statute as required by Chapter 331 of 2015 (SB 201, State Board for the Certification of Residential Child Care Program Professionals – Revisions); (2) require applicants for certification as a program administrator to submit to the board independent written verification from an employer describing the nature and direction of the applicant's experience in the human services field instead of three professional references attesting to the applicant's experience and competence as a program administrator; (3) repeal the requirement, for lack of statutory authority, that an applicant for certification shall demonstrate proof of proficiency in English; (4) repeal the requirement that the board shall review all completed applications to the extent practicable within 120 days of receipt of the completed application, repeal the authority for the board to delegate the initial review to a committee of the board, and repeal the authority for the board, at its next regular meeting, to approve or deny an application reviewed by the board in order to clarify the application review process; and (5) require the board to send a renewal notice to a certificate holder at least one month before the certificate expires either by postal mail or by electronic means.

Labor, Licensing and Regulation, Department of

Proposed Regulation

DLS Control No. 16-164

Department of Labor, Licensing, and Regulation:

State Board of Individual Tax Preparers:

General Regulations: COMAR 09.38.01.01

According to the department, the purpose of this action is to give interpretive guidance to the public and the regulated industry by providing examples of activities the board considers to

constitute providing individual tax preparation services as that term is defined in § 21-101(f) of the Business Occupations and Professions Article, Annotated Code of Maryland. Additionally, the board has defined and provided specific examples of a category of services, administrative support services that do not constitute providing individual tax preparation services. Under §§ 21-102(b) and 21-301 of the Business Occupations and Professions Article, Annotated Code of Maryland, unless specifically exempted, only an individual registered with the board may provide individual tax preparation services in Maryland.

Environment, Department of the

Proposed Regulation

DLS Control No. 16-158

Department of the Environment:

Radiation Management:

Radiation Protection: COMAR 26.12.01.01

According to the department, the purpose of this action is to update COMAR 26.12.01.01, Incorporation by Reference, to incorporate Supplement 28, to include (a) five mandatory U.S. Nuclear Regulatory Commission regulations which include clarifications to radioactive material physical protection reporting requirements, requirements for shipments of category 1 quantities of radioactive material, harmonization of transportation safety requirements with International Atomic Energy Agency requirements, and miscellaneous corrections; (b) clarification of meaning of “annual,” (c) change in frequency of required radiation survey instrument calibration and radiographer audit; (d) clarification of definition of “individual monitoring device;” (e) requirement for shutter checks for radioactive material specific license sealed sources; and (f) miscellaneous corrections.

Health Benefit Exchange, Maryland

Proposed Regulations

DLS Control No. 16-161

Independent Agencies:

Maryland Health Benefit Exchange:

General Provisions: COMAR 14.35.01.01 through .02

Eligibility Standards for Enrollment in a Qualified Health Plan and a Qualified

Health Plan with APTC and CSR in the Individual Exchange:

COMAR 14.35.07.01 through .21

According to the exchange, the purpose of this action is to amend the eligibility and enrollment standards for the Individual Exchange to set forth additional detail and conform State regulations to changes in federal regulations. Further, this action provides detail about enrollment effective dates, standards for special enrollment periods, and the due date for the first month’s premium payment. The regulations under Subtitle 35 should be read in *pari materia* with the

Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), and associated federal regulations issued before and after their promulgation.

The Maryland Health Benefit Exchange sought feedback on drafts of these regulations from the Maryland Health Benefit Exchange Standing Advisory Committee, the Maryland Insurance Administration, the Department of Health and Mental Hygiene, the Health Education and Advocacy Unit of the Office of the Attorney General, and the public. The Maryland Health Benefit Exchange undertook a multi-step process to solicit feedback on multiple drafts of these proposed regulations. Specifically, the Maryland Health Benefit Exchange solicited public written feedback on three occasions and hosted two public meetings to discuss these proposed regulations. Written and verbal comments received from each of these entities and the public informed these proposed regulations.

Higher Education Commission, Maryland

Proposed Regulations

DLS Control No. 16-162

Maryland Higher Education Commission:

Community Colleges:

Construction Procedures: COMAR 13B.07.04.01 through .04

Space Allocation Guidelines: COMAR 13B.07.05.01 and .02

According to the commission, the purpose of this action is to reflect corrections, changes, and updated practices in meeting the regulatory standards for compliance.

Insurance Administration, Maryland

Proposed Regulation

DLS Control No. 16-166

Maryland Insurance Administration:

Property and Casualty Insurance:

Temporary Moratoriums and Weather Events: COMAR 31.08.12.06

According to the administration, the purpose of this action is to repeal Regulation .06 under COMAR 31.08.12 to remove the requirement that insurers give notice to the Insurance Commissioner prior to activating a temporary moratorium. This change will make it easier for insurers to activate a temporary moratorium at the time of a specified event or emergency as listed under COMAR 31.08.12.03.

Lottery and Gaming Control Agency, Maryland State

Proposed Regulations

DLS Control No. 16-165

Maryland State Lottery and Gaming Control Agency:

Gaming Provisions:

Investigation and Licensing: COMAR 36.03.02.11 and .18

Enforcement: COMAR 36.03.04.07

Video Lottery Facility Minimum Internal Control Standards:

COMAR 36.03.10.07, .20, .24, .26, .27, .36, .44, .45, and .49

Facility Standards: COMAR 36.03.11.04

According to the agency, the purpose of this action is to (1) clarify the waiver and exemption process under COMAR 36.03.02.11; (2) authorize Commission staff to waive the requirement for facility personnel to display their identification card for a specific date and time under COMAR 36.03.02.18; (3) remove the requirement to have a report expressing an opinion as to the adequacy of the facility operator's Commission-approved internal controls over financial reporting under COMAR 36.03.10.07; (4) remove the restriction on charging check cashing fees and allow facility operators the ability to submit alternate procedures to accept and verify personal checks equal to or exceeding \$500 under COMAR 36.03.10.20; (5) remove the requirement limiting the authority to extend credit or to approve a change to a principal employee in a direct reporting line above the director of gaming operations under COMAR 36.03.10.24; (6) remove the requirement to have a five-part manual counter check under COMAR 36.03.10.26; (7) change the promotional play reporting requirement in §D of this regulation from weekly to quarterly under COMAR 36.03.10.36; (8) remove the requirement to have the count room adjacent to the cage and add the requirement that the location be approved by the Commission under COMAR 36.03.10.44; (9) remove the requirement to perform the inspection of the count room in the presence of the Commission compliance representative under COMAR 36.03.10.45; (10) remove the requirement for a cage cashier to count and report a poker dealer's tips if a gaming industry tip compliance agreement is established under COMAR 36.03.10.49; (11) allow a facility to use a single camera with sufficient definition that can clearly show the entire table layout, conduct, and outcome of the game instead of using multiple cameras under COMAR 36.03.11.04; and (12) remove gender-specific language and correct punctuation and referencing errors in order to bring the proposed regulations into compliance with the Style Manual for Maryland Regulations.

Education, State Board of

Proposed Regulation

DLS Control No. 16-168

State Board of Education:

Special Instructional Programs:

Programs of Adult Education: COMAR 13A.05.03.01 through .03

According to the board, the purpose of this action is to repeal existing regulations that are no longer needed. These programs now reside with the Department of Labor, Licensing and Regulation where new regulations already exist.

Proposed Regulation

DLS Control No. 16-169

State Board of Education:

Special Instructional Programs:

Approved Paid Work-Based Learning Programs: COMAR 13A.05.08.01 through .06

According to the board, the purpose of this action is to repeal existing regulations that are no longer needed because the law sunset on June 30, 2013. The tax credit is no longer available to employers who hire students in approved work-based learning programs.